

# **EXHIBIT 27**

2018 WL 2186438

Only the Westlaw citation is currently available.

United States District Court, S.D.  
Indiana, Terre Haute Division.

Quintero Lawrence HAYES, Plaintiff,

v.

CORIZON HEALTH SERVICES in their [official capacity](#), Samuel Byrd Dr., in his individual and [official capacity](#) as the doctor at the Wabash Valley Correctional Facility, Kim Hobson in her individual and [official capacity](#) as the supervising nurse of operations at the Wabash Valley Correctional Facility, Dea Ann Gillfillan in her individual and [official capacity](#) as a nurse at the Wabash Valley Correctional Facility, Kelly J. Kaiser in her individual and [official capacity](#) as a Nurse at the Wabash Valley Correctional Facility, Donna Lockhart in her individual and [official capacity](#) as a nurse at Wabash Valley Correctional Facility, Defendants.

No. 2:17-cv-00488-WTL-DLP

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Signed 05/10/2018

#### Attorneys and Law Firms

Quintero Lawrence Hayes, Carlisle, IN, pro se.

[Adriana Katzen](#), [Jeb Adam Crandall](#), Bleeke Dillon Crandall Attorneys, Indianapolis, IN, for Defendants.

#### ENTRY ON PENDING MOTIONS

Hon. [William T. Lawrence](#), Judge

\*1 This matter is before the Court for resolution of several motions recently filed by Plaintiff Quintero Lawrence Hayes.

#### I. Motion to Amend Complaint

Mr. Hayes's motion for leave to file an amended complaint, Dkt. No. 48, is **granted**. The **clerk is directed** to file the tendered pleading, Dkt. No. 48-1, as the amended complaint. This litigation shall proceed with the amended complaint as the operative pleading in the action.

#### II. Screening of Amended Complaint

Because Mr. Hayes is a prisoner, his amended complaint is subject to the screening requirements of [28 U.S.C. § 1915A](#). Pursuant to [28 U.S.C. § 1915A\(b\)](#), the Court must dismiss the amended complaint if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the amended complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#). See [Lagerstrom v. Kingston](#), 463 F.3d 621, 624 (7th Cir. 2006). To survive dismissal,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

[Ashcroft v. Iqbal](#), 556 U.S. 662, 678 (2009). Pro se complaints such as that filed by Mr. Hayes are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. [Obrecht v. Raemisch](#), 517 F.3d 489, 491 n.2 (7th Cir. 2008).

The amended complaint is substantially similar to the original complaint, which alleges that medical assistance was delayed or refused for three days while Mr. Hayes experienced serious medical conditions, including [acute kidney failure](#). A thorough discussion of Mr. Hayes's claims can be found in the Court's entry screening the original complaint, Dkt. No. 10, and need not be reproduced here, as the amended complaint primarily adds factual allegations to support the claims pled in the original complaint.

However, the amended complaint adds Nurse Tara Powers as a defendant. The amended complaint alleges that, before Mr. Hayes began to experience more advanced symptoms of his serious medical conditions, Nurse Powers collected a urine sample for testing, learned of abnormalities in the test results, and failed to alert Mr. Hayes or take other appropriate

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action. The amended complaint asserts plausible claims against Nurse Powers for exhibiting deliberate indifference to a serious medical need in violation of Mr. Hayes's Eighth Amendment rights and for medical malpractice and intentional infliction of emotional distress under Indiana law. These claims shall **proceed as submitted**.

The viable claims acknowledged in the Court's screening of the original complaint shall continue to **proceed as submitted**. These include deliberate indifference, medical malpractice, and intentional infliction of emotional distress claims against Dr. Samuel Byrd and Nurses Dea Ann Gilfillan, Kelly Kaiser, and Donna Lockhart; a failure-to-train claim against supervising nurse Kim Hobson; and a practice-or-policy claim against Corizon Health Services.

\*2 This summary of claims includes all of the viable claims identified by the Court. All other claims have been dismissed. If Mr. Hayes believes that additional claims were alleged in the amended complaint, but not identified by the Court he shall have **through June 15, 2018**, in which to identify those claims.

### III. Service of Process and Further Proceedings

The clerk is **designated** pursuant to [Federal Rule of Civil Procedure 4\(c\)\(3\)](#) to issue process to Defendant Tara Powers in the manner specified by [Federal Rule of Civil Procedure 4\(d\)](#). Process shall consist of the amended complaint, applicable forms (Notice of Lawsuit and Request for Waiver of Service of Summons and Waiver of Service of Summons), and this entry. The **clerk is directed** to update the docket to reflect that Ms. Powers has been added as a defendant in this action.

The remaining defendants have already appeared in this matter. Pursuant to [Federal Rule of Civil Procedure 12\(a\)\(1\)](#), they shall answer the amended complaint **within 21 days** of this entry.

In the absence of a subsequent, contrary order from the Court, this action shall continue to proceed according to the schedule established in the Court's entry of April 9, 2018. *See* Dkt. No. 39. After answering the amended complaint, Mr. Hayes and Nurse Powers shall have 30 days to comply with any component of the scheduling order for which the operative deadline has already passed.

### IV. Motion to Proceed In Forma Pauperis

On April 25, 2018, Mr. Hayes filed documentation of recent activity in his inmate trust account. To the extent Mr. Hayes filed this document as a renewed motion to proceed *in forma pauperis*, his motion, Dkt. No. 49, is **denied as moot**. The Court has already granted Mr. Hayes leave to proceed *in forma pauperis*. *See* Dkt. No. 6.

### V. Motion for Assistance with Recruiting Counsel

Mr. Hayes's motion for assistance with recruiting counsel, Dkt. No. 50, is **granted** to the extent that the Court will attempt to recruit pro bono counsel to represent him in this action. This action shall continue to proceed as directed in the pretrial schedule. If counsel is appointed for Mr. Hayes, a conference will be held to direct the further development of the action.

### VI. Motion for Subpoena

On April 30, 2018, Mr. Hayes filed a request for production of documents directed to the Indiana Department of Correction, which is not a defendant in this action. The Court understands this filing to be a motion asking the Court to issue a subpoena he may use to execute this discovery request consistent with [Federal Rule of Civil Procedure 45](#). Mr. Hayes's motion, Dkt. No. 51, is **granted** insofar as the **clerk is directed** to include an executed (but otherwise blank) subpoena with Mr. Hayes's copy of this entry. Mr. Hayes is responsible for properly serving the subpoena and his discovery request pursuant to [Rule 45](#).

**IT IS SO ORDERED.**

Attachment

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

Plaintiff  
v.  
Defendant

Civil Action No.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place: \_\_\_\_\_ Date and Time: \_\_\_\_\_

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place: \_\_\_\_\_ Date and Time: \_\_\_\_\_

The following provisions of Fed. R. Civ. P. 45 are attached—Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date:

Laura A. Briggs, Clerk

BY: Alex W. Alexander

OR

Deputy Clerk, U.S. District Court

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) \_\_\_\_\_, who issues or requests this subpoena, are:

## Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

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Civil Action No.

## PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) \_\_\_\_\_ on (date) \_\_\_\_\_.

☒ I served the subpoena by delivering a copy to the named person as follows:

\_\_\_\_\_ on (date) \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date:

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 3)

## Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

## (c) Place of Compliance.

(1) **For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) **For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

## (d) Protecting a Person Subject to a Subpoena: Enforcement.

(1) **Avoiding Undue Burden or Expense: Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) **Command to Produce Materials or Permit Inspection.**

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply.

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) **Quashing or Modifying a Subpoena.**

(A) **When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **If Not Required.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosure of a trade secret or other confidential research, development, or commercial information; or

(ii) disclosure of information that is not relevant to the party's claim or defense and is not discoverable under the Federal Rules of Civil Procedure.

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) **Specifying Conditions on an Alternative.** In the circumstances described in Rule 45(d)(3)(i), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) causes that the subpoenaed person will be reasonably compensated.

## (e) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(E) **Claiming Privilege or Protection.**

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has, must not use or disclose the information until the claim is resolved, must take reasonable steps to retrieve the information if the party disclosed it before being notified, and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(C) **Contempt.** The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

## All Citations

Not Reported in Fed. Supp., 2018 WL 2186438